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United States of America

In the Supreme Court of the United States

October Term 1944

No. 144

Lawrence Baking Company,
Petitioner,

v.

Michigan Unemployment Compensation Commission.

Brief Opposing Petition for Writ of Certiorari to Supreme Court of the State of Michigan

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Brief Opposing Petition for Certiorari. [1]

I

'Statement of Jurisdiction'.

Since the petition for certiorari fails to comply with the rule requiring a statement of jurisdiction, we respectfully submit that the application may be denied on that ground (Supreme Court Rule 12).

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[1] Unless otherwise plainly indicated, numbers in parentheses refer to pages of the transcript of record.

II

Counter Summary Statement of Matter Involved.

With the exceptions presently noted, petitioner's 'Summary Statement of Matter Involved' is acceptable to us.

1. The petition draws in question the constitutional validity of § 29 (c) of the Michigan 'Unemployment Compensation Act', **[2]** on the ground that, as applied to the Lawrence Baking Company, (1) property may be taken through taxation without due process of law, and (2) the act as it now stands arbitrarily discriminates between certain classes of employers, and between certain classes of employees.

2. Petitioner's counsel (p. 2) correctly observes that 'by the original act (as amended by Act No. 324, Pub. Acts 1939), benefits were carefully limited to cases of involuntary unemployment and the Supreme Court (of the State of Michigan) held (in an earlier case) that no part of the fund (created by the act) could be used in the financing of a strike. *Chrysler Corporation v. Smith*, 297 Mich. 438', but we cannot agree with his statement that a subsequent amendment (Act No. 364, Pub. Acts 1941) was merely 'by implication', or that it was otherwise 'obscure'.

As stated by the court below (46), 'prior to the 1941 amendment, said section 29 (c) of the 1936 act, as then last amended by Act No. 324, Pub. Acts 1939, and designated therein as section 29 (d), provided in part:

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[2] Act No. 1, § 29 (c), Pub. Acts 1936, Extra Sess., as last amended by Act No. 364, Pub. Acts 1941.

> "An individual shall be disqualified for benefits . . . (d) For any week with respect to which his total or partial unemployment is due to a labor dispute which is actively in progress in the establishment in which he is or was last employed" '. **[3]**

The court also observes that the 1941 act amended § 29 to read in part as follows:

> "An individual shall be disqualified for benefits . . . . (c) For any week with respect to which his total or partial unemployment is due to a *stoppage of work existing because of a* labor dispute in the establishin which he is or was last employed".

Thus it is clearly, rather than obscurely, seen that the 1941 amendment of section 29 (c) consisted solely of the addition of the italicized words '*stoppage of work existing because of*', and the renumbering of the paragraph as subsection (c) rather than subsection (d).

> "To summarize (said the court, p. 47), section 29 (c) of the 1936 act disqualified an employee for benefits if his unemployment was '*due to a labor dispute* . . . . actively in progress *in the establishment*'. The 1941 amendment of said section disqualifies an employee for benefits if his unemployment is '*due to a stoppage of work* existing because of a labor dispute *in the establishment*' ".

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[3] It was this plain and unequivocal language which was interpreted by the Supreme Court of Michigan in the case cited by petitioner's sounsel **(Chrysler Corporation v. Smith**, 297 Mich. 438), to mean that no part of the fund established by the act could be used to finance a strike.

And counsel is correct in stating that the court below held the section, as thus amended, to mean as follows (52):

> "Under the amendment, as construed, employees are disqualified if the labor dispute results in a stoppage of the employer's work, and they are not disqualified if the labor dispute does not result in such stoppage".

Or, as otherwise phrased by the court:

> "We are convinced that by the 1941 amendment of section 29 (c) the legislature intended to disqualify an employee for benefits, only when his unemployment resulted from a stoppage or substantial curtailment of the work and operations of the employer establishment because of a labor dispute. The phrase 'stoppage of work' refers to the work and operations of the employer establishment and not to the work of the individual employee" (50-51).

III

The Questions Involved.

We take the liberty of reframing the questions posed by petitioner:

> **First:** Is there substance to the claim that petitioner, an employer, is deprived of its property without due process of law by an act of the State legislature (the 'Michigan Unemployment Compensation Act,') which provides for payment of unemployment

benefits out of a fund created by taxation on the basis of the employer's 'experience record' (§ 19), and which disqualifies an employee from receiving benefits 'for any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed' (§ 29-c)?

Petitioner contends that such an enactment is not within legislative power, since (counsel says) payment of unemployment compensation to strikers from funds raised by taxation based on experience records, is authorized 'without regard to the rightfulness or wrongfulness of the strike'.

Respondent submits there is no substance to such a contention, since petitioner has, in the first place, failed to establish the fact that its experience record has been affected by such payments or that it has been injured in any manner by the judgment of the court below; and, second, the Supreme Court was correct in holding the section in question here does not violate the due process clause of the 14th Amendment.

Second: Is there substance to the contention that § 29 (c) of the act, by 'imposing taxation on some employers and exempting others, and providing compensation for some employees and denying it to others in the same situation except as to the single matter of stoppage of work, is an arbitrary discrimination', and that hence this section violates the equal protection clause of the Federal Constitution?

Petitioner says 'Yes'.

Respondent says there is no merit in the contention, and the court below ruled correctly in sustaining the act as constitutional.

IV

Argument.

Point One

There is no substance in the claim that § 29 (c) of the Michigan Unemployment Compensation Act operates to deprive the petitioner-employer of its property without due process of law.

Petitioner argues thus:

> "Our contention is that unless a law makes provision for determining the rightfulness or wrongfulness of a strike and awards compensation to strikers only after the strike has been determined to be rightful, that act is unconstitutional. To take money by taxation to be paid to strikers regardless of whether the employer is in the right or in the wrong, and which the employer must replace, is to take property without due process. . . . There is no inkling of a public purpose in such a tax. The legislative power to tax is broad indeed, but yet it must be possible to suppose with reason a public benefit to arise from it, or else it is invalid" (4-5, petitioner's brief).

There are several valid answers to this contention, which render petitioner's position untenable:

First: Petitioner has failed to prove that it has or will be deprived of its property in this particular instance.

Although benefits are paid out of a pooled fund created and maintained by taxation of employers (§ 19), the tax rate of any employer *may* be but not necessarily is affected by the payment of benefits to his employees or former workers in any particular case. The commission maintains a separate experience record for each employer, which includes the total wages paid by the employer and total benefits charged against the employer's record (§ 17). An experience index is the quotient obtained by dividing the said benefits by the said payroll (§ 18). Based upon this experience index, an employer's tax rate may vary between 1% and 4% of his payroll (§ 19).

We find in the transcript of record no evidence that the payment of the unemployment claims in question here have or will result in an appreciable increase in the taxes to be paid by the petitioner, and hence, we think, the constitutional question raised is purely academic.

Second: Our position is that the tax imposed to create and maintain a fund out of which unemployment compensation benefits are paid, is for a public purpose expressly declared in an enactment lying with range of legislative police powers, and the policy involved is one with which the courts have never interfered.

The unemployment compensation law of this State was not designed to regulate labor relations nor to arbi-

trate disputes between employer and employee; but its manifest purpose was to relieve economic distress in communities affected by unemployment of persons regularly employed.

The method provided to accomplish this purpose is the payment of unemployment benefits quite regardless of the conditions which the statute seeks to remedy.

The legislature in its wisdom, however, limited the payment of benefits to those individuals who can meet certain prescribed 'eligibility requirements' (§ 28), i.e., those who are able and available for work, who are registered therefor, and who have earned a definite amount of wages over a given period of time.

In weighing advantages to the economic condition of the people as a whole, resulting from payment of unemployment compensation benefits, the legislature also took into consideration social disadvantages which might result unless, under certain circumstances, benefits were denied. Such disqualification acts and the penalties prescribed therefor are enumerated in section 29 of the act.

For example, subdivision (a) thereof provides that one who voluntarily leaves his work without good cause attributable to his employer, shall be disqualified for the week in which such act occurred and for the three to five weeks immediately following. After the disqualification period has expired, the individual may receive unemployment benefits, provided he complies with the eligibility requirements of § 28, and that no other act of disqualification has been committed.

Subdivision (c) of section 29 (that in question here) provides for disqualification 'for any week with respect to which his (the employee's) total or partial unemployment is due to a stoppage of work because of a labor dispute in the establishment in which he is or was last employed'.

This legislative policy does not rest on the theory that employers are guilty of wrongdoing and must pay for the consequences of their acts; the tax is, therefore, not paid as a penalty.

Or, as the court below so ably expressed it (54):

> "Plaintiff's argument is based upon the premise that the payment of compensation to employees on strike is a penalty upon the employer, because its rate of contribution to the unemployment fund will thereby be increased. *The public purpose of the unemployment compensation law is to alleviate the distress of unemployment, and the payment of benefits is not conditioned upon the merits of the labor dispute causing unemployment.* (Emphasis supplied). Likewise, the required contribution of the employer to the unemployment compensation fund is not determined upon the basis of the merts of the dispute. The increase in the amount of the employer's contribution to the fund because of its experience record of payments to employees is not in any sense a penalty. By the unemployment compensation act, the legislature provided a method of determining the employer's contribution to the compensation fund, and it did not see fit to base the amount of such contribution upon the merits of a labor dispute or

upon the right or wrongdoing of the employer in connection with such dispute''.

We, therefore, respectfully submit that there is absolutely no merit to petitioner's contention that its property is taken without due process of law.

Point Two

Nor does the statute in question deny 'equal protection of the laws'.

The court below was satisfied that 'the 1941 amendment of section 29 (c)' as construed by it, 'does not result in an arbitrary or unjust classification of, or in discrimination between, employers involved in a labor dispute' (53), and we respectfully submit there is no substance in the contrary claim advanced by petitioner.

> ''Under such contention (said the court, 52) plaintiff argues that the circuit court's construction results in arbitrary discrimination between employers by classifying them on the basis of (1) those who elect to stop work and close down and (2) those who do not elect to stop work or close down during a strike. The amendment, as construed, does not so classify employers. All employers who are similarly affected 'because of a labor dispute' are treated alike. Under the amendment, as construed, employees are disqualified if the labor dispute results in a stoppage of the employer's work, and they are not disqualified if the labor dispute does not result in such stoppage. This is a reasonable means of determining qualification for benefits and does not

result in arbitrary or unjust discrimination between employers".

The court again approved the following statement by the appeal board, made in the earlier case of *Chrysler Corporation v. Smith*, 297 Mich. 438:

> " 'All interested parties who are involved in a claim for unemployment compensation . . . . must be dealt with on an impartial basis. The unemployment compensation fund should never be used to finance claimants who are directly involved in a labor dispute, nor should it ever be denied to claimants who are legally entitled to receive benefits. . . . None of the money accumulated in this fund should ever be disbursed for the purpose of financing a labor dispute nor should it be illegally withheld for the purpose of enabling an employer to break a strike. *The State of Michigan in so far as this act is concerned, must remain neutral in all industrial controversies*".

The policy of neutrality in such disputes is the motive of the amendment to § 29 (c), and its enforcement cannot result in unfair, unreasonable, or unjust discrimination as between classes.

> "A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it".
>
> *Carmichael v. Southern Coal & Coke Co.*,
> 301 U. S. 495, 509.

A similar question of discrimination was involved in the case of *Steelman* (*In re Steelman*, 219 N. C. 306, 13 S. E. 2d 544) where the court say:

> "It thus appears that the State seeks to be neutral in the labor dispute as far as practicable, and to grant benefits only in conformity to such neutrality. Of course, it is recognized that in a matter of this kind, some allowance must be made in fixing the line or point of difference between granting and withholding benefits during the stoppage of work caused by a labor dispute. *Supply Co. v. Maxwell*, 212 N. C. 624 (194 S. E. 117). 'But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark'. —Mr. Justice Holmes in *Louisville Gas & Electric Co. v. Coleman*, 277 U. S. 32 . . . . The wisdom or impolicy of such decision belongs to the legislative and not to the judicial department of the government. *United States v. F. W. Darby Lumber Co.*, 312 U. S. 100 . . . ."

We, therefore, in the light of such established principles, respectfully submit that the legislation here challenged does not offend the equal protection clause of the Federal Constitution, and that petitioner's contention is not worthy of serious consideration.

V

Relief Sought.

On the face of this record, we respectfully submit, petitioner is entitled to no relief, and the writ of certiorari should be denied.

Respectfully Submitted,

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